

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Mortgage Originator
License Application of
Byron W. Bradshaw

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on May 5, 2005. The hearing was held pursuant to a Notice of and Order for Hearing dated March 23, 2005. The hearing concluded on May 5, 2005. There were no post-hearing submissions.

Michael J. Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). Byron W. Bradshaw, 1455 Upper 55th Street East, Inver Grove Heights, MN 55077, appeared on his own behalf ("Respondent").

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

1. Did the Respondent commit fraudulent, deceptive, and dishonest acts, in violation of Minn. Stat. § 58.12, subd. 1(b)(iv)?

2. Did the Respondent demonstrate untrustworthiness, in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(v)?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent applied for a license as a Residential Mortgage Originator. The Department received the application on November 16, 2004. Applicants are required to provide background information as part of the application. One of the questions asked whether “the applicant or any person in control of the applicant: [has] e. Been charged with, indicted for, or convicted of, or entered a plea to, any criminal offense...other than traffic violations, in any state or federal court?” The Respondent answered “yes.”^[1]

2. Robin Brown is an employee of the Department. As part of her job responsibilities, she reviews mortgage originator license applications. She received the application from the Respondent, saw his response to the question on the application about criminal charges, and conducted an investigation to obtain additional information about the reported offense.^[2]

3. Ms. Brown obtained a copy of the criminal complaint filed against the Respondent.^[3] The Respondent was charged with wrongfully obtaining \$1,414.00 in public assistance (MFIP benefits) from Dakota County between June and September, 2002. It was alleged that the Respondent failed to report earned income, although he had been told of his obligation to report his earnings to the county.^[4]

4. Ms. Brown evaluated the criminal complaint to determine if the allegations would affect the application for a mortgage originator's license. She determined that the charges of falsely obtaining public assistance brought into question the Respondent's ability to hold funds for borrowers.^[5]

5. The Department issued the Notice of and Order for Hearing, and served it upon the Respondent, to determine if the license application should be denied.^[6]

6. The Respondent denied that he intended to fraudulently obtain public assistance. Upon the advice of counsel representing him on the criminal charges, he pled guilty, and agreed to the diversion program rather than standing trial for the offense.^[7] He has not been convicted of the offense, but instead, he was placed in a diversion program. If he meets the conditions of the diversion, the county attorney will move to have the charges dismissed. At the time of the hearing, the Respondent had completed 70 hours of community service, and paid the program fee. He was making restitution payments, and had no subsequent charges.^[8]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 45.027, subd. 7, 58.12 and 14.50 (2004).

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements. It has the burden of proving the alleged violations by a preponderance of the evidence.

4. The Commissioner may deny a mortgage originator's license if the applicant has:

* * * *

(iv) violated a standard of conduct or engaged in a fraudulent, coercive, deceptive, or dishonest act or practice, whether or not the act or practice involves the residential mortgage lending business;

(v) engaged in an act or practice, whether or not the act or practice involves the business of making a residential mortgage loan, that demonstrates untrustworthiness, financial irresponsibility, or incompetence;^[9]

5. By failing to report income to Dakota County as required in order to receive public assistance, Respondent has committed a fraudulent, deceptive or dishonest act in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv).

6. By failing to report income to Dakota County as required in order to receive public assistance, Respondent has demonstrated untrustworthiness, in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(v).

7. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Commerce deny Respondent's application for a mortgage originator's license.

Dated this 18th day of May, 2005.

S/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Tape recorded (one tape)

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Respondent does not dispute that he was charged with falsely obtaining public assistance. However, he has shown that, although he was charged, he has not been convicted of the crime. Instead, the District Court has continued the matter for two years, and the County Attorney will request that the Court dismiss the charges if the Respondent successfully complies with the terms of the Court diversion program.

At the time of the hearing, the Respondent was still making monthly payments for restitution, and was required to remain law abiding until March 8, 2006.

Respondent claims that he did not intend to defraud the county, but because of the evidence that he had not reported income, his attorney recommended that he plead guilty and accept the offer of the diversion program to avoid a conviction. In so doing, Respondent admitted to the District Court the facts that were alleged: that he had been employed and had not reported his income to the county, although he was required to do so.

The Commissioner's authority to deny the license for fraudulent or dishonest behavior is not limited to instances where the applicant has been convicted of a criminal offense. In its investigation of applications, the Department may look at the facts and determine if the actions taken by the Applicant meet the statutory criteria. At the time of his court hearing, the Applicant apparently admitted the facts alleged in the criminal complaint. These facts include that he was told to report his income but failed to do so. Although he may not have intentionally deceived the county in order to obtain public assistance, he at least misled them by failing to report his income. This demonstrates his untrustworthiness and financial irresponsibility. The facts are sufficient to support the conclusion that the Applicant engaged in a practice that was fraudulent, deceptive or dishonest, and demonstrated his untrustworthiness, regardless of whether the behavior led to a criminal conviction.

The Department is appropriately concerned that mortgage originators maintain scrupulous integrity when handling money on behalf of others. In this instance, it demonstrated that Respondent's actions did not warrant that level of trust.

B.J.H.

^[1] Exhibit 1, p.3.

^[2] Test. of Robin Brown.

^[3] Test. of R. Brown.

^[4] Ex. 2.

^[5] Test. of R. Brown.

^[6] There is nothing in the record that indicates that the Respondent was denied the license and appealed that determination. The Notice of and Order for Hearing states that the Department "initiated this action to determine if Respondent committed the violations alleged below, subjecting him to disciplinary action and denial of a residential mortgage license application."

^[7] Test. of B. Bradshaw.

^[8] Exs. 2, 3.

^[9] Minn. Stat. § 58.12, subd. 1(b) (iv) and (v).